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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

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FEDERAL COMMUNICATIONS COMMISSION
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In the matter of)
)
Service Rules for the 746-764 and 776-794)
MHZ Bands and Revisions to Part 27 of the)
Commission's Rules)
)
Carriage of the Transmissions of Digital)
Television Broadcast Stations)
)
Review of the Commission's Rules and)
Policies Affecting the Conversion to Digital)
Television)

WT Docket No. 99-168

CS Docket No. 98-120

MM Docket No. 00-8319

To: The Commission

COMMENTS

Entravision Holdings, LLC ("Entravision"), the licensee of 11 full-power television stations, including two in the 700 MHZ band¹, hereby submits its Comments in response to the *Further Notice of Proposed Rulemaking*, FCC 00-224, released June 30, 2000 ("FNRM"), in the above-referenced proceeding. In support thereof, Entravision states as follows.

1. As a television broadcaster with Stations that will be affected by the auctioning of the 700 MHZ spectrum for non-broadcast purposes, Entravision has a keen interest in the results of this FNRM. Entravision is concerned that in this rush to provide spectrum for wireless purposes and to secure funds for the Treasury, that the Commission is ignoring free over-the-air television that Entravision and others have been providing to the public. While broadcasting in the NTSC

¹ These Stations are KSMS-TV, Monterey, California, whose analog allotment is on Channel 67 and WBSV(TV), Venice, Florida, whose analog allotment is on Channel 62. Both of these Stations' NTSC allotments are ones that will be used for commercial purposes.

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mode may lack the glamour of the new technologies, it remains a source of news, information and entertainment for the public.

2. Any consideration of the clearing of the 700 MHz band must start out with an examination of the Commission's authority to recapture broadcast television spectrum. Section 309(j)(14)(A) of the Communications Act of 1934, as amended, provides an absolute right for a broadcast licensee to utilize its NTSC station until December 31, 2006. Even that date is not a firm one, as Section 309(j)(14)(B) provides that the December 31, 2006 date is to be extended if there is not available a digital signal from one of the four largest national television networks, there is no generally available digital-to-analog converter technology, or in any market 15% or more of the television households either do not subscribe to a multichannel video programming distributor that provides digital television service and do not have either at least one television receiver capable of receiving digital television signals or at least one television receiver capable of receiving analog television signals through digital-to-analog converter technology. Thus, as the Commission notes (*FNRM* at ¶ 44), the December 31, 2006 date is not a deadline, but rather a "soft target" date.

3. Considering this, Entravision supports the Commission's conclusion that any understandings between broadcasters and 700 MHz licensees must be voluntary in nature. In this regard, Entravision agrees with Commissioner Ness who, in her Separate Statement in connection with the *FNRM*, wrote:

I believe that this transition is best left to the marketplace, with regulatory intervention only where essential to remove any barriers. I am skeptical that government-mandated agreements between private parties on transition issues will be appropriate or helpful. For this reason, I support the 'voluntary' approach we have taken

to agreements between licensees, including our decision not to impose mandatory relocation of broadcast operations, as well as our conclusion not to propose the adoption of cost-sharing rules for new licensees seeking to use this spectrum.

4. Consistent with this, Entravision supports the voluntary negotiation process between incumbent broadcasters and 700 MHz wireless licensees as the sole mechanism for handling the 700 MHz band clearing process. These negotiations should occur only if the broadcaster is willing to enter into a voluntary arrangement with the 700 MHz licensee. Entravision supports either direct negotiations or what the Commission has termed “three-way” negotiations. Under such an arrangement, the incumbent broadcaster would relocate to a channel below channel 59 with the broadcaster presently operating on that portion of the spectrum relinquishing its rights in favor of consideration from the 700 MHz licensee.

5. Entravision submits that this is a beneficial mechanism as it provides the opportunity for a broadcaster operating in the 700 MHz spectrum to continue to undertake broadcasting. There may be broadcasters, including Entravision, who feel that their broadcast franchise is sacrosanct and that they should not abandon it for any price. Thus, a broadcaster taking that position would end any possibility of the 700 MHz spectrum being cleared, unless there was a “three-way” process.

6. The “three-way” negotiation allows the 700 MHz broadcaster the right to continue operating, while also clearing the spectrum for the new wireless licensee. It serves to meet the requirements of all parties, without placing any unacceptable burden upon them.

7. Entravision urges the Commission not to adopt the proposal put forth by Spectrum Exchange Group, L.L.C.² (“Spectrum Exchange”). The Spectrum Exchange proposal is for the Commission to adopt a secondary auction. Under such an auction, competitive bidding would be utilized to determine the price that would be paid by 700 MHz licensees to 700 MHz television incumbents to clear channels. The complexity of the proposal, together with the resources that would have to be devoted to it, make it a poor proposition for the Commission and the licensee community.

8. Initially, Entravision is concerned as to whether the Commission has the authority to engage itself in a private auction mechanism designed solely to benefit certain classes of participants. The Commission’s auction authority, provided in Section 309(j) of the Communications Act, is provided for the purpose of the licensing of parties for broadcast spectrum. Nothing contained therein indicates that it was intended as a mechanism for the Commission to govern private contractual matters.

9. The difficulties attendant to such a process are evident from the *FNRM*. The rules for a secondary auction will have to be complex and will require extensive drafting and administration on the Commission’s part. In the event of disputes, will the Commission serve to adjudicate the disputes among the parties or will the Courts have to do so? Given the limited resources in the Commission’s possession, it is unexpected to find the Commission willing to establish a new structure of rules and procedures for the benefit of the 700 MHz wireless industry.

² See Petition for Rule Making filed by Spectrum Exchange Group, L.L.C. on April 24, 2000.

10. In opposing FCC intervention, Entravision does not object to parties establishing a secondary auction on their own that they administer free of Commission involvement. In fact, such private auctions have occurred previously. A number of broadcast applicants undertook private auctions during the final opportunity for parties to resolve mutually exclusive broadcast applications before the Commission applied auction procedures to the selection process.³ If applicants want to undertake a private auction in this instance, the Commission should neither favor nor object to the process.

11. Consistent with the resolution of 700 MHZ band clearing by private means, there is one aspect that requires Commission intervention. If broadcasters are to clear the 700 MHZ band by giving up one of their paired channels, they should not lose their ability to serve the public by an over-the-air means, be it with an NTSC or DTV signal, and by cable carriage. Entravision is aware that in this proceeding the Commission has said that “cable systems are ultimately obligated to accord ‘must-carry’ rights to local broadcasters’ digital signals” and that a broadcaster who moves from an analog 700 MHZ channel to a digital channel can, “at its own expense, provide its broadcast digital signal in an analog format for carriage on cable systems” (§ 65).

12. Entravision submits that the Commission should not phrase its provisions in a convoluted manner. Rather, it should make clear that a 700 MHZ broadcast station that clears that spectrum is entitled, if it has only a single channel, to have that channel carried on a must-carry basis by cable television systems. Whether it is on a digital or analog basis should not matter unless the cable system is not capable of carrying a digital signal, in which event the

³ See Section 309(l) of the Communications Act. See also *Gonzales Broadcasting, Inc.*, 12 FCC Rcd 12253, 12255-12256 (1997).

broadcaster should be required to offer an analog signal. Further, if the broadcaster already holds must-carry status, the cable system should not be able to deny the channel change, unless it can convince the Commission that a stay is warranted under applicable criteria,⁴ so that the conversion can be as seamless as possible.

13. The Commission has also asked for comments on the question of cost-sharing rules attendant to the clearing of the 700 MHz band. Entravision submits that there is no need for formal cost-sharing rules. We believe that cost-sharing arrangements, if any, should be left to the private parties. Thus, if a 700 MHz licensee wants to prevent others from securing a free ride, it is entitled to negotiate with these parties a contribution arrangement. Given the immediate benefits from band clearing, one would expect that parties will be quick to enter into such arrangements. If not, the value of band clearing is such that the party securing the band clearing will absorb the costs as a necessary cost of entering the business.

14. In sum, Entravision agrees with the words of Commission Tristani in her Separate Statement that free over-the-air broadcasting must be preserved. The parties who are best suited to doing so are those that already operate on the spectrum. If they wish to remain operating, they should be entitled to do so without any interference from the Commission or 700 MHz licensees. If they wish to operate with either an analog or digital station, but not a paired situation, they should also be entitled to do so, assuming that they can reach agreement with a 700 MHz licensee and, possibly, another broadcaster. If this result is achieved, the broadcaster must be entitled not

⁴ See *Washington Metropolitan Area Transit Commission v. Holiday Tours, Inc.*, 559 F. 2d 841, 843 (D.C. Cir. 1977). See also *Virginia Petroleum Jobbers Association v. Federal Power Commission*, 259 F. 2d 921, 925 (D.C. Cir. 1965).

only to continue to broadcast but, if it has elected must-carry treatment, to have that treatment continued.

15. These results can be accomplished by private parties negotiating with each other. The Commission should avoid any involvement in the process, even as an auctioneer. The only involvement the Commission should have is to ensure, in reviewing applications to modify operating authority, that the public does not suffer a material loss of broadcast reception service and that the cable operators do not use the relocation process to avoid their must-carry obligations.

Respectfully submitted,

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Dated: August 16, 2000